

## **FINDING OF EMERGENCY**

The department finds that the adoption of Section 159.00 in Title 13, Division 1, Chapter 1, Article 3, California Code of Regulations, is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

## **FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION**

The department finds that the emergency adoption of this regulation is necessary for the immediate preservation of the public peace, health and safety or general welfare pursuant to Government Code section 11346.1(b).

- The California Supreme Court issued a final determination that the State is obligated to reimburse the County of San Diego for the costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982. (*County of San Diego v. State of California*, 1997, 15 Cal. 4<sup>th</sup> 68). The effect of this ruling will render inoperative Revenue and Taxation Code (R&TC) section 10753.2, which contained an objective depreciation schedule for vehicles based on the market value at the time of initial registration or transfer.
- This ruling may also abolish the Local Revenue Fund, which was established to provide a mechanism to reimburse counties for the costs of providing medical services to medically indigent adults. (Welfare and Institutions Code section 17600.)
- Originally, a final appellate court decision would have resulted in a return to the vehicle depreciation schedule that was contained in R&TC section 10753.1. However, this section was repealed in 2001.
- The department will, therefore, need to adopt an emergency depreciation schedule that will be effective when R&TC section 10753.2 becomes inoperative on March 1, 2004. Without this regulation, there will be no objective method for the department to uniformly depreciate the market value of a vehicle to assess the vehicle license fee equitably.

## **FINDING OF EMERGENCY**

Revenue and Taxation Code section 10752 requires the department to collect a vehicle license fee based on the vehicle's market value. The California Supreme Court issued a decision that will render Revenue and Taxation Code section 10753.2 inoperative and, therefore, no valid depreciation schedule will exist on the first day of the month immediately following the date the Department of Motor Vehicles is notified by the Department of Finance of the court's final determination. The department has been notified by the Department of Finance that Revenue and Taxation Code section 10753.2 will become inoperative on March 1, 2004. The purpose of the depreciation schedule is to uniformly reduce the vehicle license fee as the vehicle decreases in value every year. Without a valid depreciation schedule, the state may be subject to lawsuits primarily for

noncompliance with Revenue and Taxation Code section 10752 because the current annual vehicle license fee assessment would not decrease to reflect the vehicle's market value, which declines over time.

Revenue and Taxation Code section 10752 states, in part, that the annual amount of the vehicle license fee shall be a sum equal to 2% of the market value of the vehicle as determined by the department. Executive Order S-1-03 signed by the Governor on November 17, 2003, reinstates Revenue and Taxation Code section 10754 and provides an offset of the vehicle license fee equal to 67.5 percent of that VLF amount. The department has determined that the Director has the authority to establish by regulation a depreciation schedule that will be used to assess the market value of a vehicle. Since there is no valid statute that provides the guidelines for assessing vehicle market values, the department has determined that this regulation is necessary to provide the department with a consistent depreciation schedule so that all vehicles are assessed vehicle license fees equitably.

#### **AUTHORITY AND REFERENCE**

The department proposes to adopt this regulation under the authority granted by Vehicle Code Section 1651 in order to implement, interpret or make specific Revenue and Taxation Code sections 10751, 10752, 10752.1, 10753, and 10754, and Vehicle Code section 5014.1.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The proposed regulation will provide the department with a standard method for depreciating a vehicle's market value in order to assess vehicle license fees. Without this regulation, there will be no objective method to determine the declining market value, and the assessment of the vehicle license fee would not be equitable.

The department proposes to adopt section 159.00 to establish the current vehicle market value structure in a regulation because the California Supreme Court has rendered R&TC section 10753.2 inoperative, which was the statutory depreciation schedule enacted by the Legislature and used by the department to assess vehicle license fees due to the department each year as a vehicle depreciates in market value. This proposed regulation is intended to replace the inoperative provisions of R&TC section 10753.2.

#### *Statutory History:*

Historically, Revenue and Taxation Code ("R&TC") sections 10751 through 10754 establish the vehicle license fee ("VLF") and require the Department of Motor Vehicles to determine the market value on specified vehicles and to collect a VLF currently equal to two (2) percent of the vehicle's market value, less an offset of 67.5% of that VLF amount. R&TC section 10753.2 established a depreciation schedule for determining the declining market value.

In 1991, under legislation designed to "realign" the manner in which health services were administered and funded by the State and local agencies, R&TC section 10753.2 was

amended to increase VLF revenues by modifying the vehicle depreciation schedule to partially fund realigned programs. Approximately 76% of the VLF is deposited in the Motor Vehicle License Fee Account. The other 24% is deposited in the Local Revenue Fund.

The manner in which VLF revenues were increased under R&TC section 10753.2 was as follows: For the first registration year, the VLF is based upon 100% of the cost price or value of the vehicle determined at the time of initial registration or transfer of ownership. In the second year, it is based upon 90% of the base value and in the third year, it is based upon 80% of the base value. The vehicle is depreciated for 11 years until the minimum fee is based upon 15% of the base value.

Previously, under R&TC section 10753.1, a lesser VLF was assessed (i.e., lower percentage of base value), and the depreciation schedule was only ten years. For example, for the first registration year, the VLF would be based upon 100% of the base value of the vehicle. In the second year and third years, it would be based upon 85% of the base value. The vehicle would be depreciated for ten years until the minimum fee would be based upon 5% of the base value.

A partial comparison of the depreciation schedules can be illustrated as:

	<u>R&amp;TC section 10753.1 (pre- 1991)</u>	<u>R&amp;TC section 10753.2 (current)</u>
Year 1	100%	100%
Year 2	85%	90%
Year 3	85%	80%
Year 4	70%	70%

However, the 1991 realignment statutes contained “poison pills,” one of which would, by operation of law, render inoperative the 1991 increase in VLF revenues (i.e., R&TC section 10753.2) if the California Supreme Court or any California Court of Appeal found that the State was obligated to reimburse counties for the costs of the medically indigent adult (MIA) programs or if the allocation of funds from either the VLF Account or the VLF Growth Account of the Local Revenue Fund established during the 1991-92 Regular Session is found to be in violation of section 15 of Article XI of the California Constitution.

Under the terms of the 1991 realignment statutes, if R&TC section 10753.2 became inoperative, R&TC section 10753.1 would have become operative. The 1991 statutes further stated that the effective date of that reversion would be the first day of the month immediately following the date the Department of Motor Vehicles is notified by the Department of Finance (DOF) of the court’s final determination. However, section 10753.1 was repealed by the Legislature in 2001.

Now, if section 10753.2 becomes inoperative, there is no statute to become operative, and therefore, no depreciation schedule at all in the absence of emergency regulatory action.

### *Court Litigation History:*

In 1997, in the case of *County of San Diego v. State of California* (1997) 15 Cal.4<sup>th</sup> 68, the California Supreme Court found that the statutory exclusion of medically indigent adults (MIAs) from Medi-Cal mandated a new program or higher level of service on the County. The matter was remanded to determine any amounts not funded by the State. Both the Commission on State Mandates and the Superior Court determined that no additional amount was owed by the State.

However, on September 23, 2003, the Fourth District Court of Appeal reversed the Commission and Superior Court, and ruled that the State is required to reimburse the County of San Diego \$3,455,754 for costs incurred by the County for its MIA program in excess of State funding. The decision focuses on the amounts, sources, and uses of funds received by the County and whether the County met its burden of proving costs in excess of State funds.

Both parties timely filed a petition for review with the California Supreme Court, but the California Supreme Court denied both parties' petitions in December 2003, thereby sustaining the Court of Appeal's decision. The Department of Finance notified the department in February 2004 that the court decision has become final, so the current vehicle depreciation schedule will cease to be operative on March 1, 2004.

### **FISCAL IMPACT STATEMENT**

- Cost or Savings to any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Cost or Savings in Federal Funding to the State: None
- Cost Impact on Representative Private Persons or Businesses: Without this regulation, a significantly higher VLF will be charged to private persons and businesses because vehicles will not depreciate in value under any recognized law or regulation, and therefore, the VLF will be artificially inflated over time until resold to reflect a true market value.
- Effect on Housing Costs: None

### **DETERMINATIONS**

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The regulatory action

proposed by the department will maintain the current market value depreciation schedule to determine vehicle license fees due the department. The failure to adopt the proposed regulatory action will substantially increase the vehicle license fee because vehicles will not depreciate in value.

- The adoption of this regulation will not create or eliminate jobs or businesses in the State of California, nor will it result in the elimination of existing businesses, or reduce or expand businesses currently doing business in the State of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action will not affect small businesses. The regulatory action will maintain the current depreciating market value schedule to determine the vehicle license fees due the department. The failure to adopt the proposed regulatory action will substantially increase the vehicle license fee because vehicles will not depreciate in value.

#### **CONTACT PERSON**

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Bonnie DeWatney, Department of Motor Vehicles, P.O. Box 932382, Mail Station E-244, Sacramento, California 94232-3820, telephone number (916) 657-8954, or [bdewatney@dmv.ca.gov](mailto:bdewatney@dmv.ca.gov). In the absence of the department representative, inquiries may be directed to the Chief of Staff, Deborah Baity at (916) 657-5690 or [dbaity@dmv.ca.gov](mailto:dbaity@dmv.ca.gov). The fax number for the Regulations Branch is (916) 657-1204.